

HOUSE BILL No. 2680

By Representatives Sawyer, Burroughs, Carmichael, Curtis, Henry, Kuether, Ruiz, Tietze and Wolfe Moore

2-10

1 AN ACT concerning income taxation; relating to apportionment of
2 income; allowing a water's-edge election for certain taxpayers.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through 6, and amendments thereto,
6 unless the context otherwise requires:

7 (a) "Affiliated corporation" means a United States parent corporation
8 and any subsidiary of which more than 50% of the voting stock is owned
9 directly or indirectly by another corporate member of the water's-edge
10 combined group.

11 (b) "United States" means the 50 states of the United States and the
12 District of Columbia.

13 (c) "Water's-edge combined group" means all corporations or entities
14 included in the election of a taxpayer under section 2, and amendments
15 thereto.

16 (d) "Department" means the Kansas department of revenue.

17 Sec. 2. (a) Notwithstanding any other provisions of law, a taxpayer
18 subject to the taxes imposed under article 32 of chapter 79 of the Kansas
19 Statutes Annotated, and amendments thereto, may apportion its income
20 under this section. A return under a water's-edge election must include the
21 income and apportionment factors of the following affiliated corporations
22 only:

23 (1) A corporation incorporated in the United States in a unitary
24 relationship with the taxpayer and eligible to be included in a federal
25 consolidated return as described in 26 U.S.C. §§ 1501 through 1505 that
26 has more than 20% of its payroll and property assignable to locations
27 inside the United States. For purposes of determining eligibility for
28 inclusion in a federal consolidated return under this subsection, the 80%
29 stock ownership requirements of 26 U.S.C. § 1504 must be reduced to
30 ownership of over 50% of the voting stock directly or indirectly owned or
31 controlled by an includable corporation;

32 (2) domestic international sales corporations as described in 26
33 U.S.C. §§ 991 through 994;

34 (3) export trade corporations, as described in 26 U.S.C. §§ 970 and
35 971;

1 (4) foreign corporations deriving gain or loss from disposition of a
2 United States real property interest to the extent recognized under 26
3 U.S.C. § 897;

4 (5) a corporation incorporated outside the United States if over 50%
5 of its voting stock is owned directly or indirectly by the taxpayer and if
6 more than 20% of the average of its payroll and property is assignable to a
7 location inside the United States; or

8 (6) a corporation that is in a unitary relationship with the taxpayer and
9 that is incorporated in a tax haven, including Andorra, Anguilla, Antigua
10 and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda,
11 British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica,
12 Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia,
13 Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco,
14 Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, San
15 Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the
16 Grenadines, Turks and Caicos Islands, U.S. Virgin Islands and Vanuatu.

17 (b) The department shall report biennially to the standing committees
18 on assessment and taxation of the senate and the standing committee on
19 taxation of the house of representatives with an update of countries that
20 may be considered a tax haven under subsection (a)(6).

21 Sec. 3. (a) For purposes of section 2(a), and amendments thereto, the
22 location of payroll and property is determined under the individual state's
23 laws and regulations that set forth the apportionment formulas used to
24 assign net income subject to taxes on or measured by net income. If a state
25 does not impose a tax on or is not measured by net income, apportionment
26 is determined under K.S.A. 79-3271 et seq., and amendments thereto.

27 (b) For the purposes of section 2(a)(6), and amendments thereto,
28 income shifted to a tax haven, to the extent taxable, is considered income
29 subject to apportionment.

30 Sec. 4. (a) A water's-edge election may be made by a taxpayer and is
31 effective only if every affiliated corporation subject to the taxes imposed
32 under article 32 of chapter 79 of the Kansas Statutes Annotated, and
33 amendments thereto, consents to the election. Consent by the common
34 parent of an affiliated group constitutes consent of all members of the
35 group. An affiliated corporation that becomes subject to taxes under
36 article 32 of chapter 79 of the Kansas Statutes Annotated, and amendments
37 thereto, after the water's-edge election is considered to have consented to
38 the election. The election must disclose the identity of the taxpayer and the
39 identity of any affiliated corporation, including an affiliated corporation
40 incorporated in a tax haven as set forth in section 2(a)(6), and amendments
41 thereto, in which the taxpayer owns directly or indirectly more than 50%
42 of the voting stock of the affiliated corporation.

43 (b) Except as provided in subsection (c), each water's-edge election

1 must be for a three-year renewable period.

2 (c) A water's-edge election may be changed by a taxpayer before the
3 end of each three-year period only with permission of the department. In
4 granting a change of election, the department shall impose reasonable
5 conditions that are necessary to prevent the avoidance of tax or clearly
6 reflect income for the election period prior to the change.

7 Sec. 5. For purposes of sections 1 through 6, and amendments
8 thereto, dividends must be treated as follows:

9 (a) Dividends received from corporations incorporated outside the
10 United States, to the extent taxable, are considered income subject to
11 apportionment.

12 (b) The after-tax net income of United States corporations excluded
13 from eligibility as affiliated corporations under section 2(a), and
14 amendments thereto, and possession corporations described in 26 U.S.C.
15 §§ 931 through 934 and 936 are considered dividends received from
16 corporations incorporated outside the United States.

17 (c) Amounts included in income under 26 U.S.C. §§ 951 through 962
18 and 964 are considered dividends from corporations incorporated outside
19 the United States.

20 (d) Eighty percent of all dividends apportionable under this section
21 must be excluded from income subject to apportionment.

22 (e) "Deemed" distributions, as set forth in 26 U.S.C. § 78 and
23 corresponding amounts with respect to dividends considered received
24 under subsection (b) must be excluded from the income of the water's-edge
25 combined group.

26 (f) The dividends apportionable under this section are in lieu of any
27 expenses attributable to dividend income.

28 (g) A dividend from a corporation required to be combined in the
29 water's-edge combined group must be eliminated from the calculation of
30 apportionable income.

31 Sec. 6. (a) The department may require a taxpayer making a water's-
32 edge election to submit within six months after the taxpayer files its
33 federal income tax return a domestic disclosure spreadsheet to provide full
34 disclosure of the income reported to each state for the year, the tax liability
35 for each state, the method used for allocating or apportioning income to
36 the states and the identity of the water's-edge corporate group and those of
37 its United States affiliated corporations.

38 (b) The department may require a taxpayer subject to the provisions
39 of section 2(a)(6), and amendments thereto, to disclose the same
40 information for tax havens as is required for states under this section.

41 Sec. 7. This act shall take effect and be in force from and after its
42 publication in the statute book.